

Calendar No. 24

106TH CONGRESS }
1st Session }

SENATE

{ REPORT
106-42

SATELLITE HOME VIEWERS IMPROVEMENTS ACT

APRIL 13, 1999.—Ordered to be printed

Mr. HATCH, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 247]

The Committee on the Judiciary, to which was referred the bill (S. 247) to amend title 17, United States Code, to reform the copyright law with respect to satellite retransmissions of broadcast signals, and for other purposes, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

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The bill, as amended, is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Satellite Home Viewers Improvements Act”.

SEC. 2. LIMITATIONS ON EXCLUSIVE RIGHTS; SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS WITHIN LOCAL MARKETS.

(a) IN GENERAL.—Chapter 1 of title 17, United States Code, is amended by adding after section 121 the following new section:

“§ 122. Limitations on exclusive rights; secondary transmissions by satellite carriers within local markets

“(a) SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS BY SATELLITE CARRIERS.—A secondary transmission of a primary transmission of a tele-

vision broadcast station into the station's local market shall be subject to statutory licensing under this section if—

- “(1) the secondary transmission is made by a satellite carrier to the public;
- “(2) the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission; and
- “(3) the satellite carrier makes a direct or indirect charge for the secondary transmission to—

- “(A) each subscriber receiving the secondary transmission; or

- “(B) a distributor that has contracted with the satellite carrier for direct or indirect delivery of the secondary transmission to the public.

“(b) REPORTING REQUIREMENTS.—

“(1) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station under subsection (a) shall, within 90 days after commencing such secondary transmissions, submit to that station a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission.

“(2) SUBSEQUENT LISTS.—After the list is submitted under paragraph (1), the satellite carrier shall, on the 15th of each month, submit to the station a list identifying (by name and street address, including county and zip code) any subscribers who have been added or dropped as subscribers since the last submission under this subsection.

“(3) USE OF SUBSCRIBER INFORMATION.—Subscriber information submitted by a satellite carrier under this subsection may be used only for the purposes of monitoring compliance by the satellite carrier with this section.

“(4) REQUIREMENTS OF STATIONS.—The submission requirements of this subsection shall apply to a satellite carrier only if the station to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

“(c) NO ROYALTY FEE REQUIRED.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall have no royalty obligation for such secondary transmissions.

“(d) NONCOMPLIANCE WITH REPORTING REQUIREMENTS.—Notwithstanding subsection (a), the willful or repeated secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a primary transmission made by that television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided under sections 502 through 506 and 509, if the satellite carrier has not complied with the reporting requirements of subsection (b).

“(e) WILLFUL ALTERATIONS.—Notwithstanding subsection (a), the secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a primary transmission made by that television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

“(f) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR TELEVISION BROADCAST STATIONS.—

“(1) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a television broadcast station and embodying a performance or display of a work to a subscriber who does not reside in that station's local market, and is not subject to statutory licensing under section 119, is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

- “(A) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber; and

- “(B) any statutory damages shall not exceed \$5 for such subscriber for each month during which the violation occurred.

“(2) **PATTERN OF VIOLATIONS.**—If a satellite carrier engages in a willful or repeated pattern or practice of secondarily transmitting to the public a primary transmission made by a television broadcast station and embodying a performance or display of a work to subscribers who do not reside in that station’s local market, and are not subject to statutory licensing under section 119, then in addition to the remedies under paragraph (1)—

“(A) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier of the primary transmissions of that television broadcast station (and if such television broadcast station is a network station, all other television broadcast stations affiliated with such network), and the court may order statutory damages not exceeding \$250,000 for each 6-month period during which the pattern or practice was carried out; and

“(B) if the pattern or practice has been carried out on a local or regional basis with respect to more than one television broadcast station (and if such television broadcast station is a network station, all other television broadcast stations affiliated with such network), the court shall order a permanent injunction barring the secondary transmission in that locality or region by the satellite carrier of the primary transmissions of any television broadcast station, and the court may order statutory damages not exceeding \$250,000 for each 6-month period during which the pattern or practice was carried out.

“(g) **BURDEN OF PROOF.**—In any action brought under subsection (d), (e), or (f), the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a television broadcast station is made only to subscribers located within that station’s local market.

“(h) **GEOGRAPHIC LIMITATIONS ON SECONDARY TRANSMISSIONS.**—The statutory license created by this section shall apply to secondary transmissions to locations in the United States, and any commonwealth, territory, or possession of the United States.

“(i) **EXCLUSIVITY WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.**—No provision of section 111 or any other law (other than this section and section 119) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carriers of programming contained in a primary transmission made by a television broadcast station may be made without obtaining the consent of the copyright owner.

“(j) **DEFINITIONS.**—In this section—

“(1) The term ‘distributor’ means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.

“(2) The term ‘local market’ for a television broadcast station has the meaning given that term under rules, regulations, and authorizations of the Federal Communications Commission relating to carriage of television broadcast signals by satellite carriers.

“(3) The terms ‘network station’, ‘satellite carrier’ and ‘secondary transmission’ have the meaning given such terms under section 119(d).

“(4) The term ‘subscriber’ means an entity that receives a secondary transmission service by means of a secondary transmission from a satellite and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

“(5) The term ‘television broadcast station’ means an over-the-air, commercial or noncommercial television broadcast station licensed by the Federal Communications Commission under subpart E of part 73 of title 47, Code of Federal Regulations.”.

(b) **TECHNICAL AND CONFORMING AMENDMENTS.**—The table of sections for chapter 1 of title 17, United States Code, is amended by adding after the term relating to section 121 the following:

“122. Limitations on exclusive rights; secondary transmissions by satellite carriers within local market.”.

SEC. 3. EXTENSION OF EFFECT OF AMENDMENTS TO SECTION 119 OF TITLE 117, UNITED STATES CODE.

Section 4(a) of the Satellite Home Viewer Act of 1994 (17 U.S.C. 119 note; Public Law 103–369; 108 Stat. 3481) is amended by striking “December 31, 1999” and inserting “December 31, 2004”.

SEC. 4. COMPUTATION OF ROYALTY FEES FOR SATELLITE CARRIERS.

Section 119(c) of title 17, United States Code, is amended by adding at the end the following new paragraph:

“(4) REDUCTION.—

“(A) SUPERSTATION.—The rate of the royalty fee in effect on January 1, 1998, payable in each case under subsection (b)(1)(B)(i) shall be reduced by 30 percent.

“(B) NETWORK.—The rate of the royalty fee in effect on January 1, 1998, payable under subsection (b)(1)(B)(ii) shall be reduced by 45 percent.

“(5) PUBLIC BROADCASTING SERVICE AS AGENT.—For purposes of section 802, with respect to royalty fees paid by satellite carriers for retransmitting the Public Broadcasting Service satellite feed, the Public Broadcasting Service shall be the agent for all public television copyright claimants and all Public Broadcasting Service member stations.”.

SEC. 5. DEFINITIONS.

Section 119(d) of title 47, United States Code, is amended by striking paragraph (10) and inserting the following:

“(10) UNSERVED HOUSEHOLD.—The term ‘unserved household’, with respect to a particular television network, means a household that cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission of primary network station affiliated with that network.”.

SEC. 6. PUBLIC BROADCASTING SERVICE SATELLITE FEED.

(a) SECONDARY TRANSMISSIONS.—Section 119(a)(1) of title 17, United States Code, is amended—

(1) by striking the paragraph heading and inserting “(1) SUPERSTATIONS AND PBS SATELLITE FEED.—”;

(2) by inserting “or by the Public Broadcasting Service satellite feed” after “superstation”; and

(3) by adding at the end the following: “In the case of the Public Broadcasting Service satellite feed, subsequent to January 1, 2001, or the date on which local retransmissions of broadcast signals are offered to the public, whichever is earlier, the statutory license created by this section shall be conditioned on the Public Broadcasting Service certifying to the Copyright Office on an annual basis that its membership supports the secondary transmission of the Public Broadcasting Service satellite feed, and providing notice to the satellite carrier of such certification.”.

(b) DEFINITION.—Section 119(d) of title 17, United States Code, is amended by adding at the end the following:

“(12) PUBLIC BROADCASTING SERVICE SATELLITE FEED.—The term Public Broadcasting Service satellite feed’ means the national satellite feed distributed by the Public Broadcasting Service consisting of educational and informational programming intended for private home viewing, to which the Public Broadcasting Service holds national terrestrial broadcast rights.”.

SEC. 7. APPLICATION OF FEDERAL COMMUNICATIONS COMMISSION REGULATIONS.

Section 119(A) of title 17 United States Code, is amended

(1) in paragraph (1), by inserting “is permissible under the rules, regulations, and authorizations of the Federal Communications Commission,” after “satellite carrier to the public for private home viewing”; and

(2) in paragraph (2), by inserting “is permissible under the rules, regulations, and authorizations of the Federal Communications Commission,” after “satellite carrier to the public for private home viewing.”.

SEC. 8. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on January 1, 1999, except the amendments made by section 4 shall take effect on July 1, 1999.

I. PURPOSE

The satellite compulsory license found at section 119 of the Copyright Act is scheduled to expire on December 31, 1999. This legislation is necessary to extend the expiration of that license to enable satellite carriers to continue to retransmit over-the-air television broadcast stations, to provide more competition in the market for multichannel video delivery services, to reduce the royalty fees pay-

able under that license to make them more competitive with cable television services, which enjoy their own compulsory license, and to provide satellite with a permanent, royalty-free compulsory license to provide retransmissions of local television stations.

II. LEGISLATIVE HISTORY

The Satellite Home Viewer Act (SHVA) was enacted in 1988¹ to expand access to high quality and affordable television programming for rural and other households that were unserved by over-the-air or cable television and to provide a clear cut statutory framework for the delivery of broadcast programming to home satellite dish owners. It did so by creating a 6-year statutory compulsory license, embodied in section 119 of the Copyright Act, that provided satellite carriers similar copyright status with cable operators by enabling them, upon payment of a predetermined fee, to retransmit broadcast signals to home satellite dish owners for their private home viewing.

The 1988 Act was designed as a transitional measure to facilitate competition and the marketplace's ability to meet the needs and demands of home satellite dish owners.² In 1991, Senators DeConcini and Hatch, then the Chairman and Ranking Member of the Subcommittee on Patents, Copyrights, and Trademarks, asked the Register of Copyrights to conduct a review of the Copyright Act's cable and satellite compulsory licenses.³ In his 1992 report responding to that request, the Register concluded that the satellite compulsory license had functioned well.⁴ In its first 2 years of the license's operation, the number of home satellite dish owners nearly doubled, and satellite carriers' deposits with the Copyright Office for distribution to copyright owners exceeded \$6 million.⁵ Moreover, according to the Register, the objectives of the satellite license were being achieved without the administrative difficulties of its sister cable compulsory license.⁶

In response to both the Copyright Office report and cable television legislation then being considered in the Senate, the Subcommittee on Patents, Copyrights, and Trademarks held 2 days of oversight hearings on the cable compulsory license on April 6 and 29, 1992. Although the focus of the hearings was on the cable license, a general consensus emerged that the satellite license was functioning well, and several witnesses called for its extension. Based upon the success of the satellite license, its continued importance to rural and other consumers, the lack of a marketplace solution to the uncertainties of full copyright liability for satellite carriers, and the continued availability of a permanent license for cable operators, legislation to extend the satellite license for an ad-

¹ Act of Nov. 16, 1988, Public Law No. 100-667, 102 Stat. 3935 (1988).

² See H.R. Rep. No. 887 (Part II), 100th Cong., 2d sess. 15 (1988), reprinted in 1988 U.S.C.A.N. 5638, 5644.

³ See Letter from the Honorable Dennis DeConcini, Chairman, and the Honorable Orrin G. Hatch, Ranking Member, Judiciary Subcommittee on Patents, Copyright and Trademarks, U.S. Senate, to Ralph Oman, Register of Copyrights (Oct. 22, 1991) (available in Register of Copyrights, "The Cable and Satellite Carrier Compulsory Licenses: An Overview and Analysis", 1 app. (1992) (letter of request)).

⁴ Register of Copyrights, "The Cable and Satellite Carrier Compulsory Licenses: An Overview and Analysis", 157 (1992).

⁵ Id. at 111.

⁶ Id. at 157.

ditional 5 years was subsequently introduced in both the House and Senate in the 104th Congress.⁷ Similar legislation to extend the satellite license for an additional 5 years was enacted as the Satellite Home Viewer Act of 1994 on October 18, 1994.⁸

Since the enactment of the Satellite Home Viewer Act of 1994, the satellite home viewer market has continued to expand. As technology has progressed and the satellite industry has moved from a predominately need-based rural niche service to a full service video delivery competitor in both rural and urban markets, a number of difficulties have arisen. For example, the inability of satellite providers to deliver local network signals to many of their subscribers has created a significant impediment to the satellite industry's ability to serve as a full-fledged competitor to cable. Other difficulties, such as the implementation of the 1994 Act's "unserved household" restriction based on the FCC's traditional Grade B signal rules and related rules regarding satellite subscribers' eligibility to receive distant network signals, in particular, have led to a great deal of consumer confusion and even litigation. By 1996, it had become clear to Chairman Hatch, the Ranking Member, Senator Leahy, and others, that a reform of the act, as well as renewal would be necessary.

As a result, on February 6, 1997, Chairman Hatch requested the Copyright Office to conduct a global review of the Copyright Act's compulsory licensing provisions governing the retransmission of over-the-air broadcast signals. Specifically, the Copyright Office was asked to review whether the satellite compulsory license should be extended, the difficulties stemming from the implementation of the license and the distant signal eligibility rules, the relationship and possible harmonization of the cable and satellite licenses, and whether those licenses should be extended to new technologies, such as to allow the satellite retransmission of local signals, Internet retransmission of broadcast signals, and retransmission of broadcast signals by local telephone companies. The Copyright Office was asked to respond with its findings, policy options, and legislative recommendations by May 1, 1997, which deadline was subsequently extended to August 1, 1997.

In May 1997, the Copyright Office conducted 3 days of public hearings at which it heard testimony from representatives of the motion picture, satellite, cable, and broadcasting industries.⁹ On August 1, 1997, the Copyright Office submitted its findings and recommendations in response to Chairman Hatch's request.¹⁰ Among other things, the Copyright Office recommended that the cable and satellite compulsory licenses be retained, that the satellite license be extended so long as the cable license remains in effect, that differences between the two licenses be minimized where possible to promote a competitive balance between the satellite and cable industries, and that the satellite license be amended to permit the satellite retransmission of local network signals to local subscribers.¹¹ The Copyright Office supplemented its report by

⁷ See H.R. 1103, 104th Cong., 1st sess. (1993); S. 1485, 104th Cong., 1st sess. (1993).

⁸ Public Law 103-369, 108 Stat. 3477 (1994).

⁹ See Notice of Public Meetings and Request for Comments, 62 Fed. Reg. 13,396 (1997).

¹⁰ Register of Copyrights, "A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals" (1997).

¹¹ Id. at 135-37.

submitting proposed legislation to the Judiciary Committee in September 1997.

In a parallel proceeding beginning in March 1997, the Librarian of Congress convened a Copyright Arbitration Royalty Panel (CARP) pursuant to the 1994 Satellite Home Viewer Act to adjust the copyright royalty rates that had been in effect since 1992 for the satellite retransmission of network broadcast and superstation signals.¹² The CARP submitted its recommendations to the Copyright Office in August 1997, which included a significant increase in the per subscriber per month royalty rates for satellite retransmission of both network signals and superstations.¹³ The Librarian of Congress adopted the CARP recommendation on October 28, 1997,¹⁴ sparking a series of unsuccessful efforts in Congress and in the courts to reverse or delay implementation of the CARP determination.¹⁵

On November 12, 1997, the Judiciary Committee conducted a hearing to review the findings and recommendations of the Copyright Office's report.¹⁶ The Register of Copyrights, Ms. Marybeth Peters, testified on behalf of the Copyright Office. The Committee also heard testimony from Mr. Fritz Attaway, senior vice president and Washington general counsel of the Motion Picture Association of America, Mr. William F. Sullivan, vice president of Cordillera Communications, Inc., Mr. Charles C. Hewitt, president of the Satellite Broadcasting and Communications Association of America, and Mr. Decker Anstrom, president and chief executive officer of the National Cable Television Association. At that hearing, Chairman Hatch and the Ranking Member, Senator Leahy, agreed to work together to resolve these matters.

Discussions continued in the months that followed the hearing, including discussions of the draft legislation submitted by the Copyright Office. On March 5, 1998, Chairman Hatch, joined by the Ranking Member, Senator Leahy, and the Ranking Member of the Subcommittee on Antitrust, Business Rights, and Competition, Senator Kohl, introduced S. 1720, the "Copyright Compulsory License Improvement Act of 1998."¹⁷ The bill sought to implement many of the Copyright Office's recommendations, including putting satellite carriers on a more equal footing with cable operators by extending the satellite license without a sunset provision, by allowing satellite carriers to deliver local network signals within the local market at a zero copyright rate, by eliminating the 90-day waiting period for cable subscribers to become eligible to receive network programming by satellite, and by creating substantial regulatory parity between the satellite and cable industries. The bill

¹² See Initiation of Arbitration, 62 Fed. Reg. 9,212 (1997).

¹³ The CARP recommended an upward adjustment of copyright rates for retransmissions of both network and superstation signals to a uniform fee of 27 cents per subscriber, per month. Under the rates in effect since the 1992 rate adjustment, satellite carriers paid royalties equal to six cents per subscriber, per month for network signals and a two-tiered 14/17.5 cents per subscriber, per month for superstation signals.

¹⁴ See Final Rule and Order, 62 Fed. Reg. 55,742 (1997) (to be codified at 37 C.F.R. pt. 258).

¹⁵ See *Satellite Broadcasting & Comm. Ass'n. v. Librarian of Congress*, 1999 U.S. App. LEXIS 2411 (DC Cir. 1999) (denying petition for review); S. 1422, 105th Cong., 1st sess., § 5 (1997); H.R. 2921, 105th Cong., 1st sess., § 3 (1997).

¹⁶ "The Copyright Office Report on Compulsory Licensing of Broadcast Signals: Hearings before the Senate Judiciary Committee," 105th Cong., 1st sess. (1997).

¹⁷ S. 1720, 105th Cong., 2d sess. (1998). See 144 Cong. Rec. S1449 (daily ed. Mar. 5, 1998) (introductory remarks of Senators Hatch, Leahy, and Kohl).

also proposed reforms to the CARP system to make rate determinations and distributions more efficient and less expensive.

Following the introduction of S. 1720, Chairman Hatch and the Chairman of the Senate Commerce Committee, Senator McCain, engaged in a series of discussions facilitated by the Majority Leader, Senator Lott, regarding issues of overlapping jurisdiction. As a result of these discussions Chairman Hatch and Chairman McCain, along with the Ranking Members, Senator Leahy and Senator Hollings, agreed that the Committees would work together on a comprehensive and cooperative reform package, with the Judiciary Committee retaining jurisdiction over copyright issues relating to the licensing of satellite retransmissions of broadcast signals and the Commerce Committee overseeing the revision of the related communications law provisions. Shortly thereafter, on September 17, 1998, Chairman McCain, together with Senators Hatch, Leahy, DeWine, and Kohl, introduced S. 2494, the "Multichannel Video Competition Act of 1998," which sought to address satellite-related communications law issues as anticipated in the discussions between the Judiciary and Commerce Committees.¹⁸ S. 2494 was referred to the Commerce Committee, which held hearings on the bill on October 1, 1998.

On October 1, 1998, the Judiciary Committee met in executive session to consider S. 1720. An amendment in the nature of a substitute was offered by Chairman Hatch, together with the Ranking Member, Senator Leahy, and Senators DeWine, Kohl, and Durbin, to refine the underlying bill's copyright provisions and delete the communications law related reforms, which had become the focus of S. 2494 in the Commerce Committee. The substitute amendment was adopted by unanimous consent and the bill, as amended, was then ordered favorably reported to the full Senate by unanimous consent. No further action was taken on the bill, however, prior to the adjournment of the 105th Congress on October 21, 1998.

In the 106th Congress, Chairman Hatch, joined again by the Ranking Member, Senator Leahy, the Chairman of the Commerce Committee, Senator McCain, the Chairman and Ranking Member of the Judiciary Committee's Subcommittee on Antitrust, Business Rights, and Competition, Senators DeWine and Kohl, and the Majority Leader, Senator Lott, introduced S. 247, the "Satellite Home Viewers Improvements Act" on January 19, 1999.¹⁹ Senators Jeffords, Cochran, Feinstein, Feingold, and Collins were later added as additional cosponsors of S. 247. As was the case with the bill reported by the Judiciary Committee in the 105th Congress, S. 247 addresses the copyright issues relating to the satellite retransmission of broadcast signals, including granting satellite carriers a permanent copyright license to deliver local network signals within the local market at a zero copyright rate, extending the current satellite distant signal license for 5 years, eliminating the 90-day waiting period for cable subscribers to become eligible to receive network programming by satellite, cutting the copyright rate set by the 1997 CARP proceeding, and providing for a national PBS sat-

¹⁸S. 2494, 105th Cong., 2d sess. (1998). See 144 Cong. Rec. S10524 (daily ed. Sept. 17, 1998) (introductory remarks of Senators McCain and Kohl).

¹⁹S. 247, 106th Cong., 1st sess. (1999). See 145 Cong. Rec. S698 (daily ed. Jan. 19, 1999) (introductory statement of Senators Hatch and Leahy).

ellite feed. The bill again presumes a complementary communications law package to be produced by the Commerce Committee, as agreed by Chairman Hatch and Commerce Committee Chairman McCain. Chairman McCain introduced his companion bill, the "Satellite Television Act of 1999," on January 25, 1999.²⁰

A hearing on S. 247 was held in the Judiciary Committee on January 28, 1999. The Committee heard testimony from Bruce T. Reese, president and chief executive officer of Bonneville International Corporation in Salt Lake City, UT, Charles E. Meinkey, owner of the Satellite TV Warehouse in St. George, UT, Michael Peterson, executive director of the Utah Rural Electric Association, and Peter Martin, general manager of WCAX-TV in Burlington, VT. Each of the witnesses voiced their strong support for the bill and encouraged the Committee to move quickly to enact the reforms contained therein.

On February 25, 1999, the Judiciary Committee met in executive session to consider the bill. The Committee considered and accepted by unanimous consent a technical amendment offered by Chairman Hatch, together with the Ranking Member, Senator Leahy. The bill, as amended, was then ordered favorably reported to the full Senate by unanimous consent.

III. DISCUSSION

When Congress passed the Satellite Home Viewer Act in 1988, few Americans were familiar with satellite television. Those who were typically resided in rural areas of the country where the only means of receiving television programming was through use of a large, backyard C-band satellite dish. Congress recognized the importance of providing these people with access to broadcast programming, and created a compulsory copyright license in the Satellite Home Viewer Act that enabled satellite carriers to easily license the copyrights to the broadcast programming that they retransmitted to their subscribers.

The 1988 act fostered a boom in the satellite television industry. Coupled with the development of high-powered satellite service, or DSS, which delivers programming to a satellite dish as small as 18 inches in diameter, the satellite industry now serves homes nationwide with a wide range of high quality programming. Satellite is no longer a rural service, for it offers an attractive alternative to other providers of multichannel video programming; in particular, cable television. Because satellite can provide direct competition with the cable industry, it is in the interest of Congress to ensure that satellite operates under a copyright framework that permits it to be an effective competitor.

The compulsory copyright license created by the 1988 act was limited to a 5-year period to enable Congress to consider its effectiveness and renew it where necessary. The license was renewed in 1994 for an additional 5 years, and amendments made that were intended to increase the enforcement of the network territorial restrictions of the compulsory license. Two-year transitional provisions were created to enable local network broadcasters to chal-

²⁰S. 303, 106th Cong., 1st sess. (1999). See 145 Cong. Rec. S976 (daily ed. Jan. 25, 1999) (introductory statement of Senator McCain).

lenge satellite subscribers' receipt of satellite network service where the local network broadcaster had reason to believe that these subscribers received an adequate off-the-air signal from the broadcaster. The transitional provisions were minimally effective and caused much consumer confusion and anger regarding receipt of television network stations.

The satellite license is slated to expire at the end of this year, requiring Congress to again consider the copyright licensing regime for satellite retransmissions of over-the-air television broadcast stations. In passing this legislation, the Committee was guided by several principles. First, the Committee believes that promotion of competition in the marketplace for delivery of multichannel video programming is an effective policy to reduce costs to consumers. To that end, it is important that the satellite industry be afforded a statutory scheme for licensing television broadcast programming similar to that of the cable industry. At the same time, the practical differences between the two industries must be recognized and accounted for.

Second, the Committee reasserts the importance of protecting and fostering the system of television networks as they relate to the concept of localism. It is well recognized that television broadcast stations provide valuable programming tailored to local needs, such as news, weather, special announcements and information related to local activities. To that end, the Committee has structured the copyright licensing regime for satellite to encourage and promote retransmissions by satellite of local television broadcast stations to subscribers who reside in the local markets of those stations.

Third, perhaps most importantly, the Committee is aware that in creating compulsory licenses, it is acting in derogation of the exclusive property rights granted by the Copyright Act to copyright holders, and that it therefore needs to act as narrowly as possible to minimize the effects of the Government's intrusion on the broader market in which the affected property rights and industries operate. In this context, the broadcast television market has developed in such a way that copyright licensing practices in this area take into account the national network structure, which grants exclusive territorial rights to programming in a local market to local stations either directly or through affiliation agreements. The licenses granted in this legislation attempt to hew as closely to those arrangements as possible. For example, these arrangements are mirrored in the section 122 "local-to-local" license, which grants satellite carriers the right to retransmit local stations within the station's local market, and does not require a separate copyright payment because the works have already been licensed and paid for with respect to viewers in those local markets. By contrast, allowing the importation of distant or out-of-market network stations in derogation of the local stations' exclusive right—bought and paid for in market-negotiated arrangements—to show the works in question undermines those market arrangements. Therefore, the specific goal of the 119 license, which is to allow for a life-line network television service to those homes beyond the reach of their local television stations, must be met by only allowing distant network service to those homes which cannot receive the local network

television stations. Hence, the “unserved household” limitation that has been in the license since its inception. While the Committee is also mindful and respectful of the communications policy of “localism” outlined above, primary emphasis falls necessarily on property rights considerations in copyright law.

Finally, although the legislation promotes satellite retransmissions of local stations, the Committee recognizes the continued need to monitor the effects of distant signal importation by satellite. To that end, the compulsory license for retransmission of distant signals is extended for a period of 5 years, to afford Congress the opportunity to evaluate the effectiveness and continuing need for that license at the end of the 5-year period.

IV. VOTE OF THE COMMITTEE

The Senate Committee on the Judiciary, with a quorum present, met on Thursday, February 26, 1999, at 10 a.m., to consider the Satellite Home Viewers Improvements Act. The Committee considered and accepted by unanimous consent an amendment offered by the Chairman (for himself and Mr. Leahy) to make technical corrections to the bill. The Committee then ordered the Satellite Home Viewer Improvements Act reported favorably to the Senate, as amended, by unanimous consent, with a recommendation that the bill do pass.

V. SECTION-BY-SECTION ANALYSIS

Section 1.—Short title

The title of the bill is the “Satellite Home Viewers Improvements Act.”

Section 2.—Limitations on exclusive rights; secondary transmissions by satellite carriers within local markets

Section 2 of the bill creates a new, permanent compulsory license, found at section 122 of the Copyright Act of 1976, for the retransmission of television broadcast stations by satellite carriers to subscribers located within the local markets of those stations.

Creation of a new compulsory license for retransmission of local signals is necessary because the current section 119 license is limited to the retransmission of distant signals by satellite. The section 122 license allows satellite carriers for the first time to provide their subscribers with the TV signals they want most: their local stations. A carrier may retransmit the signal of a network station (or superstation) to all subscribers who reside within the local market of that station, without the burden of determining whether the subscriber resides in an unserved household. The local market for a television station will be determined by the Federal Communications Commission, and it is anticipated the market will correspond to the zone established by the Commission for mandatory carriage by satellite of local signals.

Because the section 122 license is permanent, subscribers may obtain their local networks and superstations without fear that their broadcast service may be turned off at a future date. In addition, satellite carriers may deliver local stations to commercial establishments as well as homes, as the cable industry does under its

license. These amendments create parity between the satellite and cable industries in the provision of local television broadcast stations.

In order for a satellite carrier to be eligible for this license, the carrier must be in full compliance with all applicable rules and regulations of the Federal Communications Commission, including any must-carry or programming exclusivity requirements that the Commission may adopt by regulation or law. Failure to fully comply with Commission rules with respect to retransmission of one or more stations in the local market precludes the carrier from making use of the section 122 license for all local retransmissions in that market. Thus, for example, if a satellite carrier fails to carry a local station as required by Commission rule or regulation, then the carrier loses the section 122 license for the stations that it is retransmitting in the local market of those stations.

Because the copyrighted programming contained on local broadcast programming is already licensed with the expectation that all viewers in the local market will be able to view the programming, the section 122 license is a royalty-free license. Satellite carriers must, however, provide local broadcasters with lists of their subscribers receiving local stations so that broadcasters may verify that satellite carriers are making proper use of the license. The subscriber information supplied to broadcasters is for verification purposes only, and may not be used by broadcasters for other reasons.

Satellite carriers are liable for copyright infringement, and subject to the full remedies of the Copyright Act, if they violate one or more of the following requirements of the section 122 license. First, satellite carriers may not in any way willfully alter the programming contained on a local broadcast station.

Second, satellite carriers may not use the section 122 license to retransmit a television broadcast station to a subscriber located outside the local market of the station. Retransmission of a station to a subscriber located outside the station's local market is covered by section 119, provided that all conditions of that license are satisfied. If a carrier willfully or repeatedly violates this limitation on a nationwide basis, then the carrier may be enjoined from retransmitting that signal. If the broadcast station involved is a network station, then the carrier could lose the right to retransmit any network stations affiliated with that same network. If the willful or repeated violation of the restriction is performed on a local or regional basis, then the right to retransmit the station (or, if a network station, then all other stations affiliated with that network) can be enjoined on a local or regional basis, depending upon the circumstances. In addition to termination of service on a nationwide or local or regional basis, statutory damages are available up to \$250,000 for each 6-month period during which the pattern or practice of violations was carried out. Satellite carriers have the burden of proving that they are not improperly making use of the section 122 license to serve subscribers outside the local markets of the television broadcast stations they are providing.

The section 122 license is limited in geographic scope to locations in the United States, including any commonwealth, territory, or possession of the United States. In addition, the bill makes it clear

that local retransmissions of television broadcast stations to subscribers for viewing is governed solely by the section 122 license, and that no provision of the section 111 cable compulsory license should be interpreted to allow satellite carriers to make local retransmissions of television broadcast stations under that license. Likewise, no provision of the section 119 license (or any other law) should be interpreted as authorizing local-into-local retransmissions by satellite, since the section 119 license is limited to retransmission by satellite of distant television broadcast signals. As with all compulsory licenses, these explicit limitations are consistent with the general rule that, because compulsory licenses are in derogation of the exclusive rights granted under the Copyright Act, they should be interpreted narrowly.

The Committee acknowledges that authorization and encouragement of local signals on satellite will result in a proliferation of the number of television stations that will be uplinked and available on satellites that serve the United States. The Committee does not intend, however, that the section 122 license be construed in such a way as to prevent stations that are uplinked principally for delivery as local signals under section 122 be prohibited from also being delivered as distant signals under section 119, provided that all the requirements of section 119 are met. If a satellite carrier uplinks a station and delivers it to a subscriber located in that station's local market, then the carrier may make use of the section 122 license. The carrier may also retransmit that same station to subscribers in distant markets under the section 119 license, provided that all the requirements of section 119 are met.

Section 3.—Extension of effect of amendments to section 119 of title 17, United States Code

The section 119 satellite compulsory license is extended for a period of 5 years by changing the expiration date of the legislation from December 31, 1999, to December 31, 2004. It is understood that should the section 119 license be allowed to expire in 2004, it shall do so at midnight on December 31, 2004, so that the license will cover the entire period of the second accounting period of 2004.

The Committee also believes that the advent of digital terrestrial broadcasting will necessitate additional review and reform of the distant signal license. And responsibility to oversee the development of the nascent local station satellite service may also militate for review of the status of the distant signal in the future. For all of these reasons, it seems prudent for the Committee to establish a period for review in 5 years.

Section 4.—Computation of royalty fees for satellite carriers

S. 247 reduces the royalty fees currently paid by satellite carriers for the retransmission of network and superstations by 45 percent and 30 percent, respectively. These are reductions of the 27-cent royalty fees made effective by the Librarian of Congress on January 1, 1998. The reductions take effect on July 1, 1999, which is the beginning of the second accounting period for 1999, and apply to all accounting periods for the 5-year extension of the section 119 license. The Committee has drafted this provision such that, if the section 119 license is renewed after 2004, the 45-percent and 30-

percent reductions of the 27-cent fee will remain in effect, unless altered by legislative amendment.

In addition, section 119(c) of title 17 is amended to clarify that in royalty distribution proceedings conducted under section 802 of the Copyright Act, the Public Broadcasting Service may act as agent for all public television copyright claimants and all Public Broadcasting Service member stations.

Section 5.—Definition

The “unserved household” definition of section 119 of title 17 is amended to eliminate the 90-day waiting period for satellite subscribers to wait after termination of their cable service until they are eligible for satellite service of network signals (provided that they do not receive over-the-air network signals of Grade B intensity).

Section 6.—Public broadcasting service satellite feed

S. 247 extends the section 119 license to cover the copyrighted programming carried on the Public Broadcasting Service’s national satellite feed. The national satellite feed is treated as a superstation for compulsory license purposes, thereby avoiding the unserved household restriction applicable to network signals. Also, the bill requires that PBS must certify to the Copyright Office on an annual basis that the PBS membership continues to support retransmission of the national satellite feed under the section 119 compulsory license.

Section 7.—Application of Federal Communications Commission regulations

The section 119 license is amended to clarify that satellite carriers must comply with all rules, regulations, and authorizations of the Federal Communications Commission in order to obtain the benefits of the section 119 license. This would include any programming exclusivity provisions that the Commission may adopt by law or regulation. Thus, for example, if a satellite carrier retransmitted a network station to a subscriber or subscribers in violation of FCC network nonduplication rules, then the carrier could not claim that it had a copyright compulsory license to make such retransmissions.

Section 8.—Effective date

The amendments made by S. 247 become effective on January 1, 1999, with the exception of the provisions of section 4 of the bill which become effective on July 1, 1999.

VI. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 8, 1999.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 247, the Satellite Home Viewers Improvements Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for federal costs), and Hester Grippando (for revenues).

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure.

S. 247—Satellite Home Viewers Improvements Act

Summary: Pursuant to the Satellite Home Viewer Act of 1988, satellite carriers (companies that use satellite transmissions to provide television signals directly to consumers) pay a monthly royalty fee for each subscriber to the U.S. Copyright Office for the right to retransmit network and superstation signals by satellite to subscribers for private home viewing. The Copyright Office later distributes these fees to those who own copyrights on the material retransmitted by satellite.

S. 247 would allow satellite carriers to retransmit the signals of local television broadcast stations into the local markets of those stations. The bill would eliminate a 90-day waiting period for households that switch from cable to satellite service. The bill also would extend the requirement that satellite carriers pay royalty fees to the federal government until December 31, 2004. Finally, the bill would reduce the current fees charged to superstations by 30 percent, to \$0.19 per subscriber per channel per month, and the fees paid by network stations by 45 percent to \$0.15, beginning July 1, 1999.

CBO estimates that enacting S. 247 would result in a net increase in revenues of \$477 million over the 2000–2004 period and of \$76 million in fiscal year 2005. After review by an arbitration panel, royalty fees are paid to copyright owners, along with accrued interest earnings. With higher royalty collections, the payments to copyright holders would also be higher under S. 247, by an estimated \$152 million over the 2000–2004 period, and by another \$432 million over the following five years. Because S. 247 would affect both revenues and direct spending, it would be subject to pay-as-you-procedures. Assuming appropriation of the necessary amounts, CBO also estimates that issuing conforming regulations would cost the Copyright Office about \$500,000 in 2000.

The bill would impose no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the federal government: The estimated budgetary impact of S. 247 is shown in the following table. For purposes

of this estimate, CBO assumes the bill will be enacted before the end of fiscal year 1999. CBO also assumes that payments from the federal government to copyright holders for satellite transmissions would follow historical patterns. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—				
	2000	2001	2002	2003	2004
Receipts and spending under current law:					
Estimated revenues ¹	185	118	112	107	101
Estimated budget authority ²	281	219	142	131	121
Estimated outlays	207	259	264	220	182
Proposed changes:					
Estimated revenues	17	92	107	122	139
Estimated budget authority	18	97	116	136	155
Estimated outlays	0	4	19	35	94
Net increase or decrease (–) in surplus	17	88	88	87	45
Receipts and spending under S. 247:					
Estimated revenues ¹	202	210	219	229	240
Estimated budget authority ²	299	316	258	267	276
Estimated outlays	207	263	283	255	276

¹ Includes royalty fee collections from cable television stations, satellite carriers, and digital audio devices.

² Payments to copyright owners include interest earnings on securities held by the Copyright Office.

Note: In addition to the effects shown above, S. 247 would increase spending subject to appropriation by about \$500,000 in fiscal year 2000.

Basis of estimate: S. 247 would allow a satellite carrier to make secondary transmissions of local television broadcasts, eliminate the waiting period for switching from cable to satellite service, reduce the rates of copyright royalty fees, and extend those fees through 2004. All of these provisions would affect payments by satellite carriers to the federal government and payments by the federal government to copyright holders. Assuming enactment of the bill before the end of fiscal year 1999, CBO estimates that S. 247 would increase revenues by \$477 million and increase spending by \$152 million over the 2000–2004 period.

Secondary transmission.—Section 2 of S. 247 would allow satellite carriers to retransmit the signals of local television broadcast stations into the local markets of those stations. Section 5 would eliminate a provision of current law that requires households to wait 90 days between ending cable service and beginning satellite service. These provisions would make the services provided by satellite carriers more attractive. As a result, CBO expects that the number of subscribers to satellite services would increase more rapidly than under current law. Based on information from the Copyright Office, CBO estimates that under S. 247 the annual change in the volume of satellite services would increase from a projected rate of 10 percent a year to an average of about 15 percent a year. Because these provisions could increase the incentives for choosing satellite service over cable service, they might lead to a loss in revenues from cable fees. However, based on information from the Copyright Office and the cable and satellite industries, CBO estimates that any such reduction in revenues would not be significant.

S. 247 would result in a small discretionary cost for the Copyright Office to issue conforming regulations. CBO estimates that

the cost of issuing those regulations would be about \$500,000, subject to the availability of appropriated funds.

Reduction in the copyright royalty fee.—A rule issued on October 28, 1997, by the Librarian of Congress, increased the royalty fee to \$0.27 per subscriber per month. S. 247 would reduce the royalty fee on superstations by 30 percent to \$0.19 per subscriber per channel per month and the rates on network stations by 45 percent to \$0.15, effective July 1, 1999. Based on information from the Copyright Office, CBO estimates that this provision would reduce revenues by \$26 million in fiscal year 2000, when the fees would expire under current law. But this deduction would be more than offset by extending the copyright royalty fees from January 1, 2000, to December 31, 2004.

Extension of copyright royalty fees.—Under current law, the royalty fees for satellite carriers expire on December 31, 1999. S. 247 would extend royalty fees through December 31, 2004, increasing both revenue from satellite carriers and payments to copyright holders (including interest) during the 2000–2004 period. In fiscal year 2000, the net change in estimated revenues would be relatively small—\$17 million—because the additional revenue from extending the fees (\$43 million) would be partially offset by a reduction in fee payments due early in the year under current law. By 2004, CBO expects additional revenues to total \$139 million because of the fee extension.

Payments to copyright holders.—S. 247 would result in additional spending because all revenues are eventually paid to copyright holders with interest. Historical spending patterns indicate that copyright holders may receive the fees and interest up to 10 years after the Copyright Office has collected the revenues. Thus, CBO estimates a significant lag between changes in revenues and the eventual changes in outlays that stem from copyright fees.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	0	0	4	19	35	94	108	108	117	75	24
Changes in receipts	0	17	92	107	122	139	76	0	0	0	0

Intergovernmental and private-sector impact: S. 247 would impose no intergovernmental or private-sector mandates as defined in UMRA. However, the bill would have two effects on the future royalty fees paid by satellite carriers and later distributed to copyright holders, which include some state and local government entities. First, the bill would reduce the rates that satellite carriers must pay to retransmit the signals of local television broadcast stations. Second, the bill would extend the fees (at the lower rate) from the end of calendar year 1999 to the end of calendar year 2004. The

increase in payments to copyright holders would be \$152 million over the 2001–2004 period.

Estimate prepared by: Federal costs: Mark Hadley; Revenues: Hester Grippando; Impact on State, local, and tribal governments: Theresa Gullo; Impact on the private sector: Jean Wooster.

Estimated approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

VII. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b)(1), rule XXVI of the Standing Rules of the Senate, the Committee, after due consideration, concludes that S. 247 will not have significant regulatory impact.

VIII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 247, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 17—COPYRIGHTS

* * * * *

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

Sec.

101. Definitions.

* * * * *

122. *Limitations on exclusive rights; secondary transmissions by satellite carriers within local market.*

* * * * *

§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

[(1) SUPERSTATIONS.—] *(1) SUPERSTATIONS AND PBS SATELLITE FEED.—*Subject to the provisions of paragraphs (3), (4), and (6) of this subsection and section 114(d), secondary transmissions of a primary transmission made by a superstation *or by the Public Broadcasting Service satellite feed* and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, *is permissible under the rules, regulations, and authorizations of the Federal Communications Commission,* and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for di-

rect or indirect delivery of the secondary transmission to the public for private home viewing. *In the case of the Public Broadcasting Service satellite feed, subsequent to January 1, 2001, or the date on which local retransmissions of broadcast signals are offered to the public, whichever is earlier, the statutory license created by this section shall be conditioned on the Public Broadcasting Service certifying to the Copyright Office on an annual basis that its membership supports the secondary transmission of the Public Broadcasting Service satellite feed, and providing notice to the satellite carrier of such certification.*

(2) NETWORK STATIONS.—

(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection and section 114(d), secondary transmissions of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, *is permissible under the rules, regulations, and authorizations of the Federal Communications Commission*, and the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission.

* * * * *

(c) ADJUSTMENT OF ROYALTY FEES.—

(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—

The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective unless a royalty fee is established under paragraph (2) or (3) of this subsection.

* * * * *

(4) REDUCTION.—

(A) SUPERSTATION.—*The rate of the royalty fee in effect on January 1, 1998, payable in each case under subsection (b)(1)(B)(i) shall be reduced by 30 percent.*

(b) NETWORK.—*The rate of the royalty fee in effect on January 1, 1998, payable under subsection (b)(1)(B)(ii) shall be reduced by 45 percent.*

(5) PUBLIC BROADCASTING SERVICE AS AGENT.—*For purposes of section 802, with respect to royalty fees paid by satellite carriers for retransmitting the Public Broadcasting Service satellite feed, the Public Broadcasting Service shall be the agent for all public television copyright claimants and all Public Broadcasting Service member stations.*

* * * * *

(d) DEFINITIONS.—As used in this section—

(1) DISTRIBUTOR.—The term “distributor” means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission

either directly to individual subscribers for private home viewing or indirectly through other program distribution entities.

* * * * *

[(10) UNSERVED HOUSEHOLD.—The term “unserved household”, with respect to a particular television network, means a household that—

[(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

[(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.]

(10) *UNSERVED HOUSEHOLD.*—*The term “unserved household”, with respect to a particular television network, means a household that cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network.*

* * * * *

(12) *PUBLIC BROADCASTING SERVICE SATELLITE FEED.*—*The term “Public Broadcasting Service satellite feed” means the national satellite feed distributed by the Public Broadcasting Service consisting of educational and informational programming intended for private home viewing, to which the Public Broadcasting Service holds national terrestrial broadcast rights.*

* * * * *

HISTORICAL AND STATUTORY NOTES

TERMINATION OF SECTION

Section 4(a) of Pub. L. 103–369 provided that: “Section 119 of title 17, United States Code [this section], as amended by section 2 of this Act, ceases to be effective on [December 31, 1999] *December 31, 2004.*”

* * * * *

§122. Limitations on exclusive rights; secondary transmissions by satellite carriers within local markets

(a) *SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS BY SATELLITE CARRIERS.*—*A secondary transmission of a primary transmission of a television broadcast station into the station’s local market shall be subject to statutory licensing under this section if—*

(1) *the secondary transmission is made by a satellite carrier to the public;*

(2) the secondary transmission is permissible under the rules, regulations, or authorizations of the Federal Communications Commission; and

(3) the satellite carrier makes a direct or indirect charge for the secondary transmission to—

(A) each subscriber receiving the secondary transmission;

or

(B) a distributor that has contracted with the satellite carrier for direct or indirect delivery of the secondary transmission to the public.

(b) **REPORTING REQUIREMENTS.**—

(1) **INITIAL LISTS.**—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station under subsection (a) shall, within 90 days after commencing such secondary transmissions, submit to that station a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission.

(2) **SUBSEQUENT LISTS.**—After the list is submitted under subparagraph (1), the satellite carrier shall, on the 15th of each month, submit to the station a list identifying (by name and street address, including county and zip code) any subscribers who have been added or dropped as subscribers since the last submission under this subsection.

(3) **USE OF SUBSCRIBER INFORMATION.**—Subscriber information submitted by a satellite carrier under this subsection may be used only for the purposes of monitoring compliance by the satellite carrier with this section.

(4) **REQUIREMENTS OF STATIONS.**—The submission requirements of this subsection shall apply to a satellite carrier only if the station to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

(c) **ROYALTY FEE REQUIRED.**—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall have no royalty obligation for such secondary transmissions.

(d) **NONCOMPLIANCE WITH REPORTING REQUIREMENTS.**—Notwithstanding subsection (a), the willful or repeated secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a primary transmission made by that television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided under sections 502 through 506 and 509, if the satellite carrier has not complied with the reporting requirements of subsection (b).

(e) **WILLFUL ALTERATIONS.**—Notwithstanding subsection (a), the secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a primary transmission made by that television broadcast station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies pro-

vided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions or additions, or is combined with programming from any other broadcast signal.

(f) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR TELEVISION BROADCAST STATIONS.—

(1) INDIVIDUAL VIOLATIONS.—*The willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a television broadcast station and embodying a performance or display of a work to a subscriber who does not reside in that station's local market, and is not subject to statutory licensing under section 119, is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—*

(A) *no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber; and*

(B) *any statutory damages shall not exceed \$5 for such subscriber for each month during which the violation occurred.*

(2) PATTERN OF VIOLATIONS.—*If a satellite carrier engages in a willful or repeated pattern or practice of secondarily transmitting to the public a primary transmission made by a television broadcast station and embodying a performance or display of a work to subscribers who do not reside in that station's local market, and are not subject to statutory licensing under section 119, then in addition to the remedies under paragraph (1)—*

(A) *if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier of the primary transmissions of that television broadcast station (and if such television broadcast station is a network station, all other television broadcast stations affiliated with such network), and the court may order statutory damages not exceeding \$250,000 for each 6-month period during which the pattern or practice was carried out; and*

(B) *if the pattern or practice has been carried out on a local or regional basis with respect to more than one television broadcast station (and if such television broadcast station is a network station, all other television broadcast stations affiliated with such network), the court shall order a permanent injunction barring the secondary transmission in that locality or region by the satellite carrier of the primary transmissions of any television broadcast station, and the court may order statutory damages not exceeding \$250,000 for each 6-month period during which the pattern or practice was carried out.*

(g) *BURDEN OF PROOF.*—In any action brought under subsection (d), (e), or (f), the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission but a television broadcast station is made only to subscribers located within that station's local market.

(h) *GEOGRAPHIC LIMITATIONS ON SECONDARY TRANSMISSIONS.*—The statutory license created by this section shall apply to secondary transmissions to locations in the United States, and any commonwealth, territory, or possession of the United States.

(i) *EXCLUSIVITY WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.*—No provision of section 111 or any other law (other than this section and section 119) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carriers of programming contained in a primary transmission made by a television broadcast station may be made without obtaining the consent of the copyright owner.

(j) *DEFINITIONS.*—In this section—

(1) The term “distributor” means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.

(2) The term “local market” for a television broadcast station has the meaning given that term under rules, regulations, and authorizations of the Federal Communications Commission relating to carriage of television broadcast signals by satellite carriers.

(3) The terms “network station”, “satellite carrier”, and “secondary transmission” have the meaning given such terms under section 119(d).

(4) The term “subscriber” means an entity that receives a secondary transmission service by means of a secondary transmission from a satellite and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(5) The term “television broadcast station” means an over-the-air, commercial or noncommercial television broadcast station licensed by the Federal Communications Commission under subpart E of part 73 of title 47, Code of Federal Regulations.